

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

SOUTH FULTON MEDICAL CENTER

and

CASE 10-CA-34290

FELITIA DOZIER, An Individual

*Jeffrey Williams, Esq.,*  
for the General Counsel.  
*David P. Jaqua, Esq.,*  
for the Respondent.

DECISION

Statement of the Case

**LAWRENCE W. CULLEN, Administrative Law Judge:** This case was heard before me in Atlanta, Georgia, on July 17, 2003, and closed on July 18, 2003. The charge in this proceeding was filed by the Charging Party Felitia Dozier, an Individual, on March 6, 2003. The complaint alleges, Respondent, South Fulton Medical Center, admits and I find that at all material times herein, Respondent, a Georgia corporation with an office and place of business in East Point, Georgia, has been engaged in the provision of health care services, that during the past twelve month period, Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000, that Respondent purchased and received at its East Point facility goods valued in excess of \$50,000 directly from suppliers located outside the State of Georgia and that at all times material herein, Respondent has been an employer within the meaning of Section 2(2), (6) and (7) of the National Labor Relations Act (“the Act”).

The complaint further alleges, Respondent admits and I find that at all material times the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act.

Jerry Crawley	Supervisor
Andrea McClary	Main Admissions Manager
Mike Brohm	Chief Financial Officer
Cedell Raggs	ED Admission Lead

George Laurin  
Pauline Mansfield

Director of Human Resources  
Direct of Human Resources Coordinator

The complaint alleges that on or about November 5, 2002, Respondent discharged its employee Felitia Dozier because she engaged in protected concerted activities and to discourage her and other employees from engaging in these and other protected concerted activities and that Respondent thereby has been interfering, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

Charging Party Felitia Dozier was hired on February 11, 2002, as a Patient Financial Services Representative in the Emergency Room of the facility. In her position she recorded information concerning the patients' health history and identification and their insurance and financial information in preparation for their admission to the facility for medical attention. There are three Patient Services Representatives assigned to the emergency room per shift. The Triage area of the emergency room is where patients are screened for admission and the financial and insurance information is taken from them by the Patient Financial Services Representative. One of the Representatives is assigned to this area which is used for admitting the less serious cases and sits at a desk for the majority of the time. The other area is called the Zoning Area for the more serious emergency cases and cases brought in by ambulance. This is staffed by two representatives and requires the representatives to spend considerable time on their feet and to move around in the area to obtain the information for admission of these more serious emergency patients.

In this case Dozier had problems with some of her co-workers and complained to her immediate supervisor Jerry Crawley. Crawley testified the co-workers also complained about Dozier and particularly that she would leave the immediate work site without informing them. She received an evaluation on June 10, 2002, in which she was marked as deficient in the areas of communication, team work and her failure to attend 75% of the monthly staff meetings. On June 12, she did attend a staff meeting and near the end of the staff meeting held by Manager of Admissions Andrea McClary and attended by Chief Financial Officer John Brohm and as the trainer Monica Sharpe was beginning a presentation she loudly asked whether the meeting was over and left. According to supervisor Crawley and leadman Cedell Raggs she pushed away her chair, and slammed her hand on the table while doing so. She had earlier in this meeting according to her un rebutted testimony raised several complaints about morale that had been expressed to her by her fellow employees which she stated was due to equipment breakdowns, lack of management support and staff problems. She also recommended that the Respondent institute an incentive program. Her supervisor Jerry Crawley met with her on June 14, 2002, and issued a final written warning to her for her conduct at the June 12<sup>th</sup> meeting. The warning is titled "Performance Management Program Record of Conference" and contains a paragraph entitled "Reason for Conference" which states as follows:

On several occasions Felitia has been counseled for her teamwork ability and communication styles. Recently I have noticed a dramatic decrease in her teamwork and communication choices. In example: Felitia stresses her concerns more so to complain rather than to improve on processes, which was well evident in our latest staff meeting. Felitia's attitude does not promote employee morale, but decreases it. Felitia's low evaluation score reflects her performance and professionalism.

The warning also contains a paragraph entitled "Action Plan For Improvement" which states:

Felitia must show immediate improvement with her professional behavior, communication styles, and teamwork ability. Felitia must realize the importance of maintaining a professional attitude at all times, and that teamwork is the solution to making processes work. Felitia must also understand that this is her FINAL WARNING and that any more infractions will result in termination from Tenet SFMC. Felitia will be reviewed within one week of this documentation.

Dozier requested a meeting with Admissions Department Andrea McClary and told her she did not mean to do anything improper at the staff meeting and would not do so in the future. Supervisor Crawley met again with Dozier about a week after the June 14<sup>th</sup> warning and told her she had done a "360" turnaround improvement in her performance. Dozier testified that McClary told her she was proud of her.

In September, a complaint was filed by the mother of a child who was awaiting examination. The mother asked Dozier how long the wait time would be and claimed that Dozier was rude and did not even look at the child. She complained of this to leadman Cedell Raggs who gave her supervisor Jerry Crawley's telephone number. She called Crawley with the complaint and he referred it to McClary. McClary testified she determined that the complaint warranted a three day suspension and Crawley was instructed to suspend Dozier. However in the interim, news of the impending suspension was leaked out by a lead employee who was terminated for leaking this information out. As a result of this circumstance, Pat Cheeks, who was then the Human Resources Manager, told McClary to withhold the discipline from Dozier.

On Sunday, November 2, 2002, Dozier was working the night shift from 7:00 p.m. to 7:00 a.m.. She was working in the Triage area. She testified she had not felt well that evening but had come to work because she knew they were short of staff. She began to feel ill and testified she told E.R. patient representative Sonja Walters who also sits in the triage area that she was going to lunch. At the hearing patient representative Walters testified that between 10:00 or 11:00 that night, Dozier told her she would be right back and she (Walters) said okay and that she would watch the front (the Triage area). She was due to get off at 12:00 a.m. but stayed until a little after 1:00 a.m. in case patients came in. At 12:00 a.m. she made her rounds and saw that Dozier had not returned which

was confirmed by the Triage nurse. Walters left a little after 1:00 a.m.. Walters testified that Dozier did not say anything about lunch or that she was ill.

Emergency Room Patient Financial Services Representative LaSandra Chevere who was working on the same shift as Dozier on November 2<sup>nd</sup> testified that she had observed problems with Dozier who was gone from the Triage area and they did not know where she was from time to time which would require her and Cedell Raggs who worked in the zoning area to come up to the front to register patients. This occurred earlier in the summer of 2002, before Raggs became a lead employee. She spoke to Dozier about this. After Raggs became a lead employee, he was replaced in the zoning area by admissions representative Cheryl Vinson. The problems with Dozier leaving continued after Raggs became a lead man and she told Raggs it was still going on.

Chevere testified concerning the events of Sunday, November 2, and Monday morning, November 3. On that day Chevere, and Vinson were working in the zoning area and Dozier was working in the triage area. About 11:00 p.m., Dozier asked her to keep an eye on the triage area and said she would be right back, and Chevere said, "fine." Dozier did not say she was going to lunch. She did not say she was ill. Dozier was gone about 30 to 45 minutes and they did not know where she was. She then received a telephone call from Dozier who told her she had gone home to eat and was on her way back. Chevere told Dozier she should have told her because she did not know she had left the hospital. Five to ten minutes later Dozier called again and asked for the on call supervisor's (Cedell Raggs) telephone number. She gave Dozier Raggs' page number. Ten to fifteen minutes later Dozier called back and said that Raggs had not returned her page. Chevere told her to call Jerry Crawley, the E.R. admissions supervisor and asked if she had the number. Dozier said she had it. Twenty to twenty-five minutes went by and Chevere had not heard from anyone so she paged Crawley and he returned her page, within ten minutes and asked what was going on. She asked if Dozier had paged him and he said no and asked what the problem was. She explained that Dozier had left and not returned and that Dozier told her that she had called Raggs' number and that he had not returned her call. Shortly after she talked to Crawley, Raggs called and said he was coming in. Dozier did not say anything about being sick. Chevere was not aware that Dozier was ill. During this entire period Chevere and Vinson were required to go between the triage area and zoning area to register patients.

Dozier testified that fellow Patient Financial Services Representative LaSandra Chevere was working in the Zoning area and that she told Chevere about 11:45 – 11:50 p.m. that she was going to lunch, was still not feeling good and would be back in 30 minutes and would be right back. Chevere testified that Dozier did not mention lunch but only told her she would be right back. Dozier testified that when she left she was feeling worse and forgot to take her wallet, drivers' license and cell phone which were in an employee locker. She had intended to go to her own home about 15 minutes away but decided to stop at a friend's home where she spends a lot of time and which she refers to as her home. The friend's home was closer and so she decided to go there instead because of her illness. When she arrived she ate some food on an empty stomach and began to vomit. She contends she buzzed her leadman, Cedell Raggs, who was on call

that night to inform him she was ill and would be delayed in getting back to work. She buzzed Raggs four or five times but he did not answer his pager. Finally, she called Chevere who told her she wished that Dozier had told her she was leaving the building and told her to call supervisor Crawley. Dozier did not do this but called Chevere back 10 to 15 minutes later and asked for Raggs' number. Chevere buzzed Crawley herself and told him of the situation. Crawley then called Raggs and told him to get a substitute or to go in himself. Raggs testified that his buzzer had been turned on to its vibrator and that he did not know of the message. When he did check the number he noted a number and called it back several times without success before reaching Dozier who told him she was ill and had taken some medication which had made her drowsy and that she would be delayed. He told her not to come in and that he was coming in. Dozier worked the next couple of days and her home was burglarized on November 4, 2002. She called manager McClary to ask for two weeks off to straighten things out following the burglary. McClary said she would call her back and did so within an hour or two and told Dozier they would need to meet to discuss her "job abandonment." McClary and Crawley met with Dozier on November 8<sup>th</sup> and McClary discharged her for "job abandonment." She appealed through the Respondent's grievance procedure and her appeal was ultimately denied. The new Director of Human Resources George Laurin issued a letter to Dozier as follows:

January 3, 2003

Felitia Dozier

Dear Ms. Dozier:

On Friday, December 20, 2002, I conducted a review of your termination. You were in attendance along with your supervisors and Manager. In reviewing the actions that led to your termination, I have noted that your initial evaluation conducted on June 10<sup>th</sup> identified poor judgement and teamwork. This was such of an issue a 30-day plan was initiated. On June 14<sup>th</sup> you were disciplined for poor communication and teamwork.

Then on the night of November 3<sup>rd</sup> you left your assigned work area without permission. Your initial documentation states that you went home which is in College Park. However, during my review you stated that you went to your boyfriend's<sup>1</sup> house. There is a time discrepancy between the time that you say you left and the time that you said you started calling for your supervisor. As I tried to gain a better understanding of the situation you refused to discuss the matter any further so the review was ended.

Based on the information provided I have decided to uphold the termination. Ultimately, you were instructed during your initial orientation how to properly callout. If you had followed these procedures and not left your work area without permission there would not have been

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<sup>1</sup> Dozier testified that the friend was not her boyfriend.

an issue. As in the previous issues, it comes down to teamwork and communication. If you wish to continue with the Fair Treatment Process please let me know in writing.

5 If you have any further questions or concerns please free to call me at (404)305-4731.

Sincerely,

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s/George M. Laurin  
George M. Laurin  
Director of Human Resources

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*Analysis*

20 In his opening statement General Counsel stated that the issue to be resolved in this hearing was whether Respondent's termination of Felitia Dozier was based on a protected concerted activity, that on June 12, 2002, Dozier raised questions concerning suggestions of other employees about their terms and conditions of employment and on June 14, 2002, she was issued a written warning in retaliation for her comments made in the June 12 meeting and ultimately that Dozier's protected concerted activity was the impetus for the November 2002 termination.

25 Respondent defends and asserts an affirmative defense by contending that the prior warning is barred by Section 10(b) (the six month period for filing a charge) and that the prior warning cannot therefore be used as a basis for a finding of discrimination by its termination of her in November 2002. Respondent also defends on the merits of the case and asserts that the termination was for just cause as she had received a poor performance evaluation on June 10, 2002, wherein she did not meet the standards of performance and was cited in the appraisal for teamwork and communication deficiencies and failure to attend staff meetings and that she was given a 30-day improvement plan. Respondent contends that Dozier acknowledged that she had problems with other employees and that other employees had problems with her. Respondent states that she received the warning on June 14, because of her conduct at a staff meeting. Respondent contends she was not disciplined because of any comments at the meeting and notes  
35 that no other employees joined in with anything she said at the meeting but rather she was disciplined because toward the end of the meeting she became angry during a presentation by another employee and slapped her hand on the table and screamed in a loud voice, "Is this meeting over?" got up and left the meeting while it was still in progress. She received a warning for this as they had talked with her before about getting along with other people. Respondent  
40 contended that the evidence would show that she was ultimately discharged for job abandonment for leaving her job during her shift and failing to communicate with management for over two hours and leaving her co-workers in a lurch and that this incident followed a patient complaint which occurred in September 2002, for which she was to have been suspended for three days, but that there was an intervening leak of the impending suspension by a lead employee and the then  
45 Human Resources Manager Cheek, advised Manager McClary to withhold the issuance of the suspension.

Respondent asserts as an affirmative defense that the complaint is barred by Section 10(b) of the Act to the extent that it is based on the occurrence or any consequences of acts, omissions, events and decisions which occurred more than six months prior to the filing of the charge with the Board. It relies on the leading case of *Local Lodge No. 1424 v. NLRB (Bryan Mfg.)* 362 U.S. 411 (1960) where the Supreme Court held:

[I]n applying rules of evidence as to the admissibility of past events, due regard for the purposes of §10(b) requires that two different kinds of situations should be distinguished. The first is one where occurrences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose §10(b) ordinarily does not bar such evidentiary use of anterior events. The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of the earlier unfair labor practice is not merely 'evidentiary,' since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice.

362 U.S. at 416-17

The Court said at 422, "a finding of violation which is inescapably grounded on events predating the limitations period is directly at odds with the purposes of the §10(b) proviso."

Respondent contends that the holding in *Bryan Manufacturing* as discussed by the Administrative Law Judge in *Keller Mfg. Co.*, 272 NLRB 763 (1984) squarely fits the instant case as the General Counsel's theory that Dozier's November 5, 2002 discharge violated Section 8(a)(1) of the Act is inescapably grounded on the contention that the June 14, 2002, "Final Warning" had been given to Dozier for alleged protected activity at the June 12, 2002 staff meeting.

I find merit in the Respondent's affirmative defense and find that the General Counsel did not establish a prima facie case of a violation of the Act by the Respondent's discharge of Dozier as the June 12<sup>th</sup> warning occurred outside the alleged Section 10(b) period and cannot be relied on to establish the Section 8(a)(1) violation by reason of Dozier's termination

In the event that the Board does not agree with my finding that the complaint should be dismissed based upon Section 10(b) of the Act, I will proceed to make alternate findings with respect to the merits of the case.

I find that the General Counsel has failed to established a prima facie case. I find that the issuance of the warning was for the disruption that Dozier caused at the meeting by her loud and rude behavior in exiting the meeting while trainer Monica Sharp was in the process of making a training presentation near the end of the meeting rather than by her raising complaints regarding



the terms and conditions of employment of herself and her fellow employees. I find that the raising of these complaints by Dozier was protected concerted activity, but I do not find that they were the contributing factor for the issuance of the “Final Warning” by Crawley. I find that in the absence of reliance on the “Final Warning” as the contributing factor underlying motivation as the reason for her discharge in November 2002, the General Counsel has failed to establish a prima facie case. I further find that assuming arguendo that the General Counsel has established a prima facie case, it has been rebutted by the Respondent by the preponderance of the evidence as I find that the Respondent regarded the two hour absence of Dozier from her duty post at the medical center emergency room as a serious offense for which she should be discharged. I find the Respondent has demonstrated that it would have discharged Dozier even in the absence of her engagement in protected concerted activities.

I thus find that the criteria of *Wright Line, a Division of Wright Line Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert denied 455 U.S. 989 (1982) necessary to establish prima facie case may be applied in this case as follows:

1. Dozier engaged in protected concerted activities when she spoke out at the June 12<sup>th</sup> meeting concerning complaints on behalf of her self and her fellow employees. However, I find that the contributing cause for the issuance of the final warning to her was her rude exit from the meeting which was still in progress.

2. The Respondent had knowledge as its management was present at the meeting.

3. The employer discharged Dozier several months later for “job abandonment.”

4. There is no nexus or link between the protected concerted activities of Dozier and her discharge, underlying motive.

Assuming arguendo that the General Counsel had established a prima facie case, the burden of persuasion would shift to Respondent to demonstrate that it would have discharged Dozier in any event notwithstanding the unlawful motive. I find that Respondent has met this burden of proof and has demonstrated that it would have discharged Dozier even in the absence of the alleged unlawful motive. While Dozier may have been ill, there was a lengthy period when she did not notify Chevere or her supervisor Crawley when she was unable to contact Raggs. I find that Respondent justifiably found the delay in calling the hospital to at a minimum contact Chevere or the other representative and advising them she was delayed by illness, was grounds for her discharge. I find she would have been discharged even in the absence of her protected concert activities at the June 12, meeting. I thus find that the complaint should be dismissed.

### Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondent did not violate the Act by its discharge of Feletia Dozier.



I issue the following:<sup>2</sup>

**RECOMMENDED ORDER**

5           The complaint is dismissed.

Dated, Washington, D.C.

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**Lawrence W. Cullen**  
**Administrative Law Judge**

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**2**       If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.